

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ELIJAH DOUGLAS ROGERS,

Plaintiff,

v.

PERRY RUSSELL, *et al.*,

Defendants.

Case No. 3:21-cv-00412-MMD-CSD

ORDER

Pro se Plaintiff Elijah Douglas Rogers brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Northern Nevada Correctional Center (“NNCC”). (ECF No. 1-1.) On January 27, 2022, this Court ordered Rogers to update his address by February 25, 2022. (ECF No. 7.) That deadline expired without an updated address from Rogers, and his mail from the Court is being returned as undeliverable. (See ECF No. 8.)

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of

1 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
2 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
3 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

4 The first two factors, the public's interest in expeditiously resolving this litigation
5 and the Court's interest in managing its docket, weigh in favor of dismissal of Rogers'
6 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
7 because a presumption of injury arises from the occurrence of unreasonable delay in filing
8 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
9 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
10 cases on their merits—is greatly outweighed by the factors favoring dismissal.

11 The fifth factor requires the Court to consider whether less drastic alternatives can
12 be used to correct the party's failure that brought about the Court's need to consider
13 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
14 that considering less drastic alternatives *before* the party has disobeyed a court order
15 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
16 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
17 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
18 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
19 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
20 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
21 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
22 F.2d 1421, 1424 (9th Cir. 1986).

23 Because this action cannot realistically proceed without the ability for the Court
24 and the defendants to send Rogers case-related documents, filings, and orders, the only
25 alternative is to enter a second order setting another deadline. But without an updated
26 address, the likelihood that the second order would even reach Rogers is low, so issuing
27 a second order will only delay the inevitable and further squander the Court's finite
28 resources. Setting another deadline is not a meaningful alternative given these

1 circumstances. The fifth factor therefore also favors dismissal. In sum, the Court finds that
2 these factors weigh in favor of dismissal.

3 It is therefore ordered that this action is dismissed without prejudice based on
4 Rogers' failure to file an updated address in compliance with this Court's January 27,
5 2022, order.

6 The Clerk of Court is directed to enter judgment accordingly and close this case.
7 No other documents may be filed in this now-closed case. If Rogers wishes to pursue his
8 claims, he must file a complaint in a new case and provide the Court with his current
9 address.

10 DATED THIS 28th Day of February 2022.

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13 MIRANDA M. DU
14 CHIEF UNITED STATES DISTRICT JUDGE
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